maintain suit on such a bond irrespective of the question whether or not a material man has a lien on public buildings. *School District v. Livers* (1899) 147 Mo. 580, 49 S. W. 507; *Kaufmann v. Cooper* (1896) 46 Neb. 644, 65 N. W. 796. By Federal statutes (30 St. 906, ch. 218, 33 St. 811, c. 778) material men are expressly given the right to sue in the name of the United States on construction bonds given to the government. *Equitable Surety Co. v. McMillan* (1913) 234 U. S. 448, 34 Sup. Ct. 803; *Illinois Surety Co. v. Davis Co.* (1916) 37 Sup. Ct. 614.

F. C. H.

DEATH BY WRONGFUL ACT—NATURE OF PLAINTIFF'S RIGHT—EFFECT OF RELEASE BY DECEDENT.—The husband of the plaintiff while a passenger on a car of the defendant corporation received injuries which ultimately resulted in death. Before his death he had executed a release of liability to the defendant. The widow brought suit under a statute which provides that: "When the death of a person . . . is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death, ..." *Held*, that, the release by the husband was not a bar to the plaintiff's cause of action. *Earley v. Pacific El. R. Co.* (1917, Cal.) 167 Pac. 514.

By the common law the death of a human being could not be complained of as a civil injury. *Baker v. Bolton* (1808) 1 Camp. 493. In 1846 Lord Campbell's Act—the foundation, with various modifications, of subsequent American legislation—created a new right of action in favor of the persons for whose benefit a suit by the decedent's administrator or executor was authorized. *Blake v. Midland Ry. Co.* (1852) 18 Q. B. 93, 110. It was not a "survival act" and hence the injured person's right of action still terminated with his death. *Pulling v. Great Eastern Ry. Co.* (1882) L. R. 9 Q. B. D. 110. But Lord Campbell's Act gave the new right subject to the condition that the injury must be "such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof." 9 & 10 Vict. (1846) c. 93. Consequently a release by the injured person would bar a suit for the benefit of the widow or other relatives. *Read v. Great East. Ry. Co.* (1868) 3 Q. B. 555. The courts in this country in construing statutes with a similar clause have followed the English decisions. *Southern, etc. Co. v. Cassin* (1900) 111 Ga. 575, 36 S. E. 881; *Jones v. Kansas City Ry. Co.* (1903) 178 Mo. 528, 77 S. W. 890. But there are a number of statutes in this country which do not contain such a provision and under such statutes a release given by the injured party does not bar the beneficiaries' right of action. *Eichorn v. New Orleans, etc. Co.* (1904) 112 La. 236, 36 So. 335. *Donahue v. Drexler* (1884) 82 Ky. 157. Similarly, in states which have a "survival act" and also an act creating a new and separate cause of action, recovery under one should not logically bar recovery under the other; and some courts so hold. *Davis v. St. Louis, etc. R. Co.* (1890) 54 Ark. 389, 13 S. W. 801. *Stewart v. United Electric Light & Power Co.* (1906) 104 Md. 332, 65 Atl. 49. *Contra, Louisville & Nashville R. R. Co. v. McElwain* (1896) 98 Ky. 700, 34 S. W. 236. The difficulty, both in the decisions and in the legislation, has arisen from a failure to recognize that two independent rights are involved, one being that of the injured person, the other that of the next of kin not to be injured in support.

J. N. M.

EJECTMENT—ENCROACHING BAY WINDOW AND EAVES.—The bay window and eaves of the defendant's house projected nearly five feet over the line of the

adjoining owner who brought an action of ejectment to recover possession of the strip of land thus encroached upon. *Held,* that the action could be maintained. *McDivitt v. Bronson* (1917, Neb.) 163 N. W. 761.

See COMMENTS, p. 265.

EQUITY JURISDICTION—CORPORATIONS—INTERNAL AFFAIRS OF A FOREIGN CORPORATION.—A bill was filed by the minority stockholders of a foreign corporation to prevent a majority of the directors from winding up the business and selling the corporate property to another company, in which the defendant directors owned nearly all the stock. *Held,* that the relief asked for might properly be given, even though it involved an interference with the internal affairs of a foreign corporation. *Corry v. Barre Granite and Quarry Co.* (1917, Vt.) 101 Atl. 38.

The rule has been laid down very generally, and is often very broadly stated, that a court of equity will not attempt to exercise jurisdiction over the internal affairs of a foreign corporation. *Howell v. Chicago R. R.* (1868 N. Y. Sup. Ct.) 51 Barb. 378; *Van Dyke v. Railway Mail Assoc.* (1912) 118 Minn. 390, 137 N. W. 15. It is the modern tendency to limit the application of this rule. Some courts have accomplished this by narrowing the definition of internal affairs. *Guilford v. Western Union Tel. Co.* (1894) 59 Minn. 332, 61 N. W. 324. Cf. *North State Copper Min. Co. v. Field* (1885) 64 Md. 151, 20 Atl. 1039. The true rule is not one of jurisdiction, strictly speaking, but one of sound judgment and discretion, depending on the facts in each case. *Babcock v. Farwell* (1910) 245 Ill. 14, 91 N. E. 683; *Ives v. Smith* (1888, Sup. Ct.) 3 N. Y. Supp. 645, 651. Two sound reasons for applying the rule are the practical difficulty of enforcing the decree effectively against a foreign corporation, and the danger of confusion through opposite decisions, in different jurisdictions, on the same right in the case of different individuals. *Kimball v. St. Louis R. R.* (1892) 157 Mass. 7, 31 N. E. 697; *Madden v. Electric Light Co.* (1897) 181 Pa. St. 617, 37 Atl. 817. Where these two reasons do not apply the court may well proceed. On this ground the decision in the principal case seems sound.

EQUITY—LACHES—PURSUING MISTAKEN REMEDIES FOR 25 YEARS.—The defendant company was charged with using its control of the majority of the stock of a railroad corporation to gain an inequitable advantage over the minority stock holders. A series of legally misdirected and unsuccessful suits were brought by the minority stock holders who finally filed the present bill 25 years after the cause of action had arisen, in which for the first time they were held to have conceived their remedy correctly. *Held,* that the suit was not barred by laches. *Bogert v. Southern Pacific Co.* (1917, C. C. A. 2d) 244 Fed. 61.

The general rule followed in state courts is that where equity and law have concurrent jurisdiction the statute of limitations is a bar in equity. *Tucker v. Linn* (1904, N. J. Ch.) 57 Atl. 1017. Apparently where equitable jurisdiction is exclusive, except where the statute expressly applies to equitable proceedings, state courts act only on analogy. Wood, *Limitations* (4th ed.) sec. 59; see *Hall v. Law* (1880) 102 U. S. 46, 26 L. Ed. 217. In both state and federal courts, in cases where equitable jurisdiction is exclusive and where unusual conditions make it inequitable to forbid the maintenance of a suit even though a longer period than that fixed by the statute of limitations has elapsed, the question whether laches will bar the complaint will be determined by the equities which condition it. *Kelley v. Boettcher* (1898, C. C. A. 8th) 85 Fed. 55, 62; *Stevens v. Grand Central Min. Co.* (1904, C. C. A. 8th) 133 Fed. 28. The better